

Adopt He-W 508, previously effective 12/22/94 (document #5941), and expired 12/22/02, to read as follows:

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 508 MEDICAL ASSISTANCE FOR HOME CARE OF CHILDREN WITH SEVERE DISABILITIES (HC-CSD).

He-W 508.01 Definitions.

- (a) "Active treatment" means "active treatment" as defined in 42 CFR 483.440 (a).
- (b) "Cost effective" means the estimated Medicaid cost of care per child outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.
- (c) "Degree of care" means the level of intensity or extent of medical care, treatment or intervention required by the child as determined by the medical setting in which the child is being evaluated.
- (d) "Department" means the department of health and human services.
- (e) "Healthy kids-gold" means the program administered by the New Hampshire department of health and human services (DHHS) under which the assistance authorized by Title XIX of the Social Security Act is made available to eligible children under the age of 19.
- (f) "Medical review team (MRT)" means a group of medical professionals, comprised of physicians and registered nurses with expertise in the care of children with chronic health conditions, developmental disabilities, or behavioral issues, who determine medical eligibility for healthy kids-gold medical assistance in accordance with the criteria set forth in He-W 507 and He-W 508.
- (g) "Medicaid" means the Title XIX program administered by DHHS which makes medical assistance available to eligible individuals.
- (h) "Recipient" means any individual who is eligible for and receiving medical assistance under the programs entitled healthy kids-gold or Medicaid.
- (i) "Substantial" means to have major effect, degree of importance, value or extent.
- (j) "Title XIX" means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by The Department under programs entitled healthy kids-gold and Medicaid.

He-W 508.02 Eligibility.

- (a) To be eligible for medical assistance for home care of children with severe disabilities, the child shall meet all of the following criteria:
 - (1) Reside with at least one parent;
 - (2) Be able to receive services in the home as defined in 45 CFR 233.90(c)(1)(v)(B);

(3) Meet the recipient criteria of He-W 641.04, except that, pursuant to the prohibition in 1614(f)(2)(B) of the Social Security Act on the deeming of parental income, the criteria of He-W 641.04(c)-(e) shall not apply;

(4) Have an impairment or combination of impairments that meets, medically equals, or functionally equals the criteria for an impairment listed in 20 CFR Pt. 404, Subpt. P, App.1;

(5) Requires the same degree of care that is typically provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded as specified in He-W 508.03, in accordance with Section 1902 (e) (3) of the Social Security Act; and

(6) Requires a written opinion from a treating physician that home care is medically appropriate and safe.

(b) The MRT shall determine that home care is medically appropriate when all of the following criteria are met:

(1) The care can be provided in the child's home without jeopardizing the medical needs of the child;

(2) Primary caregivers who reside with the child have expressed a willingness and desire to assume health care responsibility for the child in order to maintain the child at home; and

(3) Primary caregivers who reside with the child have been trained to support the child's needs in the home.

He-W 508.03 Degree of Care.

(a) The MRT shall determine that the child requires the same degree of care provided by a hospital if all of the following criteria are met:

(1) The child would reside in the hospital, or require frequent hospitalizations if services were not provided;

(2) The child's condition, which requires hospital level of care, is expected to last for at least one year from the date of application;

(3) The child requires an extensive array of health care services throughout the day including:

a. Hands-on comprehensive medical interventions and treatments;

b. Direct medical monitoring and assessment; and

c. Intense medication regimen for the child's medical condition;

(4) The child requires daily skilled medical treatment that is more complex than a nursing facility level of care, and involves all of the following:

a. Specialized training for caregivers to perform the treatment safely and effectively;

- b. The ability to recognize changes in the child's condition that require prompt interventions to avert complications; and
- c. The ability to modify treatment plans throughout the day based on the child's condition;

(5) The child requires daily use of sophisticated medical equipment such as ventilators and central venous lines which require frequent monitoring; and

(6) The seriousness of the child's medical condition creates a constant potential for aspiration, respiratory obstruction, or cardiac or respiratory arrest requiring the need for prompt, recurrent, skilled interventions to sustain life.

(b) The MRT shall determine that the child requires the same degree of care provided by a psychiatric hospital if all of the following criteria are met:

(1) The child has a serious emotional disturbance as defined in The Federal Register, Volume 58, No. 96 and PL 102-321, that is expected to last for at least one year from the date of application; and

(2) The intensity of the child's mental health needs are so severe that without proper interventions in the home and community, the child would reside in a hospital or require frequent hospitalization;

(3) The child has severe limitations in at least two (2) of the following capacities:

- a. A consistent inability to take care of age-appropriate personal self care such as grooming, hygiene, dressing, toileting, and eating;
- b. Functioning in the community such as constant lack of judgment, behavioral control, or decision-making skills resulting in imminent involvement with the juvenile justice system;
- c. Functioning in social relationships such as persistent inability to maintain relationships with peers and adults;
- d. Functioning in the family such as repeated unprovoked violence toward family members, chronic destructive patterns, and an inability to conform to basic limits;
- e. Functioning at school or work such as persistent failing grades, repeated truancy, expulsion, and inability to meet educational goals;

(4) The child has severely disabling symptoms for which office-centered outpatient treatment is not adequate;

(5) The child is receiving mental health counseling services of 3 hours or more per week for a period of at least 6 weeks through mental health, special education related to emotional needs, juvenile justice, child protective services, or social services; and

(6) Eligibility for children under the age of four shall be determined in accordance with He-W 508.03(a) or He-W 508.03(c) due to the intensity and nature of their needs.

(c) The MRT shall determine that the child requires the same degree of care provided by a nursing facility when all of the following criteria are met:

(1) The child requires nursing facility level of care that is expected to last at least 1 year from the date of application;

(2) The child would reside in a nursing facility if the following services were not provided on a daily basis:

a. Complex and comprehensive hands-on nursing care as described in He-W508.03(a)(3); or

b. Complex and comprehensive rehabilitative care which includes all of the following:

1. At least 3 hours of therapy;

2. Direct hands-on assistance to perform complex nursing treatments or all activities of daily living; and

3. Hands-on care which substantially exceeds age appropriate assistance; and

(3) Complex skilled nursing care or comprehensive rehabilitative interventions are necessary, including all of the following:

a. Modifications in the child's plan of treatment are necessary throughout the day;

b. Specialized professional training and monitoring beyond those ordinarily expected of parents are needed to assist parents in acquiring skills and judgment to safely provide home care;

c. The child's impairment substantially interferes with the ability to engage in everyday activities and perform age appropriate activities of daily living at home and in the community including, but not limited to bathing, dressing, toileting, feeding, walking and mobility; and

d. The child's daily routine is substantially altered by the need to complete these specialized, complex, and time consuming treatments or need for assistance with self care activities.

(d) The MRT shall determine that the child requires the same degree of care provided by an intermediate care facility for the mentally retarded if all of the following criteria are met:

(1) The child has a developmental disability as defined in RSA 171-A:2,V that is expected to last for at least one year from the date of application;

(2) The child requires a continuous and pervasive active treatment program throughout the child's daily routine;

(3) The child's developmental disability requires a 24-hour plan of care including supervision and active treatment for medical, behavioral, or habilitation needs;

(4) The child's developmental disability results in substantial impairments of general intellectual functioning or adaptive behavior requiring continuous supervision, monitoring, and redirection of behaviors to a substantially greater degree than other children in the child's particular age group.

(5) The child's developmental disability results in functional limitations to a substantially greater degree than other children in the child's particular age group in at least three (3) of the following major life activities:

- a. Self-care and Capacity for Independent Living. The child is unable to perform major activities of daily living independently, or requires extraordinary assistance from other persons;
- b. Mobility. The child is non-ambulatory and dependent on others for moving skills or needs substantial assistance to move about;
- c. Understanding and use of language. The child has no expressive or receptive communication skills or needs substantial assistance to communicate;
- d. Learning. The child scores two (2) or more deviations below the norm on current accredited standardized cognitive tests;
- e. Self-direction. The child demonstrates a lack of internal control and direction exemplified by exhibition of any of the following behaviors on at least a monthly basis of an intensity that requires a professional behavioral treatment plan:
 1. Physical or verbal aggression;
 2. Temper tantrums;
 3. Self-injurious behavior;
 4. Inappropriate handling of body wastes;
 5. Ingestion of non-food substances; or
 6. Ritualistic or persevering behaviors which interfere with social relationships;and

(6) Eligibility for children under the age of 3 years shall be determined in accordance with He-W 508.03(a) or He-W 508.03(c) due to the intensity and nature of their needs.

He-W 508.04 Cost Effectiveness of Care. The Department shall determine that home care is cost-effective for each child when the cost to the Title XIX program for such home care is no higher than the estimated cost to the Title XIX program for institutional care of each child.

He-W 508.05 Continued Eligibility.

(a) The MRT shall conduct redeterminations of medical eligibility for Title XIX benefits based on current evidence of the child's disability or based upon changes in eligibility.

(b) At the time of redetermination, the MRT shall determine whether the recipient meets the eligibility standards in accordance with He-W 508.02 and He-W 508.03.

(c) The Department shall issue a notice to the recipient when a denial of continued medical eligibility is made following a medical redetermination.

(d) The MRT shall continue the recipient's medical eligibility after an adverse medical eligibility redetermination when the recipient submits to the local district office both a request for a hearing and for a continuation of benefits during the appeal process not later than 10 days from the date of written notice of adverse decision.

He-W 508.06 Termination of Medical Eligibility.

(a) The Department shall terminate medical eligibility for HC-CSD when:

- (1) The MRT determines that the recipient does not meet the eligibility criteria specified in He-W 508.02; and
- (2) The recipient fails to submit a continuation of benefits request to the local district office within 10 days from the date of written notice of adverse decision.

He-W 508.07 Notice of Adverse Decision.

(a) The Department shall notify an individual in writing of any adverse determination.

(b) The written notification of an adverse determination shall include:

- (1) The recipient's identifying information;
- (2) A listing of the medical and non-medical reports considered during the determination process;
- (3) A description of the impairments considered during the determination process;
- (4) The reasons for the department's action;
- (5) Citations from federal and state statutes and regulations supporting the department's actions; and
- (6) An explanation of the individual's right to appeal the department's determination including how to reapply for medical assistance.

He-W 508.08 Appeals.

(a) Individuals may appeal a denial of eligibility pursuant to RSA 541-A:31, III and He-C 200.

(b) Individuals shall submit the written request for a fair hearing to the local district office or The Department's administrative appeals unit not later than 30 days from the date of the notice of decision.